

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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In re:	:	
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MPM Silicones, LLC, <u>et al.</u> ,	:	Case No. 14-7492
	:	
Debtors.	:	Appeal from Chapter 11
	:	Case No. 14-22503
	:	Adversary Proceedings
BOKF, NA, solely as Trustee for the MPM	:	No. 14-08227
Escrow LLC and MPM Finance Escrow Corp.	:	No. 14-08228
8.875% First Priority Senior Secured Notes due	:	
2020; WILMINGTON TRUST, N.A., solely as	:	
Trustee for the Momentive Performance Materials	:	
Inc. 10% Senior Secured Notes due 2020,	:	
	:	
Appellants,	:	
	:	
v.	:	
	:	
MOMENTIVE PERFORMANCE MATERIALS	:	
INC., MOMENTIVE PERFORMANCE	:	
MATERIALS WORLDWIDE INC.,	:	
MOMENTIVE PERFORMANCE MATERIALS	:	
USA INC., JUNIPER BOND HOLDINGS I LLC,	:	
JUNIPER BOND HOLDINGS II LLC, JUNIPER	:	
BOND HOLDINGS III LLC, JUNIPER BOND	:	
HOLDINGS IV LLC, MOMENTIVE	:	
PERFORMANCE MATERIALS QUARTZ, INC.,	:	
MPM SILICONES, LLC, MOMENTIVE	:	
PERFORMANCE MATERIALS SOUTH	:	
AMERICA INC., MOMENTIVE	:	
PERFORMANCE MATERIALS CHINA SPV	:	
INC.,	:	
Appellees.	:	
	X	

**MOTION OF BOKF, NA, IN ITS CAPACITY
AS FIRST LIEN TRUSTEE, AND OF WILMINGTON
TRUST, NATIONAL ASSOCIATION IN ITS CAPACITY AS 1.5
LIEN TRUSTEE FOR LEAVE TO FILE EXHIBITS UNDER SEAL**

Appellants BOKF, NA and Wilmington Trust, N.A. (the “Trustees”) respectfully seek leave pursuant Rule 5.2(d) of the Federal Rules of Civil Procedure to file Exhibits D (“Augustine Declaration”) and E (“Derrough Report”) (collectively, “Exhibits”) to the Appendix to the Brief for Appellants under seal. The Exhibits contain references to material that has been designated as “Confidential” and “Professionals’ Eyes Only” (collectively, “Confidential Information”) by the debtors and debtors-in-possession in the above-referenced chapter 11 cases (the “Debtors”) in accordance with the protective order that was entered in connection the chapter 11 proceedings (the “Protective Order”) [Bankr. Docket No. 678.], and which, if disclosed, could cause harm to the Debtors, BOKF, NA and Wilmington Trust, National Association, in their capacities as trustees for certain bond indentures (the “Trustees”).¹

ARGUMENT

This Court enjoys “considerable discretion in determining whether good cause exists” to permit filing under seal. *Geller v. Branich Int’l Realty Corp.*, 212 F.3d 734, 738 (2d Cir. 2000); *see also* Fed. R. Civ. P. 5.2(d). Such good cause exists where public filing would reveal confidential information and disclosure would cause harm to the parties’ businesses, especially where the parties have entered into a confidentiality agreement precisely to protect against disclosure. *E.g., DiRussa v. Dean Witter Reynolds, Inc.*, 121 F.3d 818, 826 (2d Cir. 1997) (upholding filing under seal due to parties’ confidentiality agreement); *Encyclopedia Brown Prods., Ltd. v. Home Box Office, Inc.*, 26 F. Supp. 2d 606, 614 (S.D.N.Y. 1998) (sealing certain

¹ Appellants are (1) BOKF, NA, as successor indenture trustee (the “First Lien Trustee”) under that certain indenture dated as of October 25, 2012, as supplemented by that certain supplemental indenture, dated as of November 12, 2012 (the “First Lien Indenture”) for the 8.875% First-Priority Senior Secured Notes due 2020 (the “First Lien Notes”) issued by debtor Momentive Performance Materials Inc. (“MPM”) and guaranteed by certain of the above-captioned debtors and debtors in possession and (2) Wilmington Trust National Association, solely as trustee (the “1.5 Lien Trustee”) under that certain indenture dated as of May 25, 2012, as further modified, supplemented or amended and in effect on the date hereof (the “1.5 Lien Indenture”) for the Momentive Performance Materials Inc. 10% Senior Secured Notes due 2020 (the “1.5 Lien Notes”) issued by MPM. The First Lien Indenture and the 1.5 Lien Indenture are collectively referred to as the “Indentures.” The First Lien Notes and the 1.5 Lien Notes are collectively referred to as the “Notes,” and the holders of those notes as the “Noteholders.”

court filing due to alleged harm from disclosure of confidential information). That is exactly the case here.

First, the Trustees seek to file the Exhibits under seal in order to remain in compliance with the Protective Order, which requires that the Trustees not publicly disclose information that has been designated as Confidential Information by the Debtors. *See DiRussa*, 121 F.3d at 826.

Second, the Debtors have alleged that they could suffer harm if certain information contained in the Exhibits were to be publicly disclosed. *See, e.g., Encyclopedia Brown*, 26 F. Supp. 2d at 614.

Third, the public interest in the sealed materials is limited. The limited information that the Trustees seek to file under seal relates to the declarations of two expert witnesses submitted in connection with the hearing on confirmation of MPM's chapter 11 plan of reorganization regarding the financial terms of certain notes issued to MPM's senior creditors under the plan.

CONCLUSION

For the foregoing reasons, the Trustees respectfully request that the Court enter the proposed order directing that the Exhibits be filed under seal in its entirety.

Dated: New York, New York
September 30, 2014

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CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury that, on September 30, 2014, I caused the foregoing Motion to Seal to be filed and served by using the Court's CM/ECF system. I further certify that, on September 30, 2014, I caused the foregoing Motion to Seal to be served on counsel of record via first-class mail and electronic mail at the following addresses:

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